

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

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901 N. 5TH STREET

KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:

United States Department of Agriculture, Grain
Inspection, Packers and Stockyards Administration,
Federal Grain Inspection Service
10383 North Ambassador Drive
Kansas City, Missouri 64153

COMPLAINT, COMPLIANCE
ORDER AND NOTICE OF
OPPORTUNITY FOR HEARING

EPA ID No. MOD985796762

Respondent.

Proceeding under Section
3008(a) and (g) of the Resource
Conservation and Recovery Act,
as amended, 42 U.S.C. § 6928(a) and (g).

Docket No. RCRA-07-2006-0276

I. PRELIMINARY STATEMENT

This Complaint, Compliance Order, and Notice of Opportunity for Hearing ("Complaint") is issued pursuant to Section 3008(a) and (g) of the Solid Waste Disposal Act ("SWDA"), as amended by the Resource Conservation and Recovery Act of 1976 ("RCRA") and the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), 42 U.S.C. § 6928(a) and (g), and in accordance with the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules of Practice"), Title 40 Code of Federal Regulations ("C.F.R.") Part 22.

The Complainant is the Chief of the RCRA Enforcement & State Programs Branch of the Air, RCRA, and Toxics Division of the United States Environmental Protection Agency ("EPA"), Region VII, who has been duly delegated the authority to bring this action. The Respondent is the United States Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, Federal Grain Inspection Service, which is an agency of the United States.

The authority to execute this Complaint is provided to the Regional Administrators by EPA Delegation No. 8-9-A, dated May 11, 1994. This authority has been delegated to the

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RCRA RECORDS

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Director of the Air, RCRA and Toxics Division of EPA, Region VII, by EPA Delegation No. R7-8-9-A, dated January 1, 1995, and further redelegated to the Chief of the RCRA Enforcement and State Programs Branch, by EPA Delegation No. R7-DIV-8-9-A, dated June 15, 2005.

The State of Missouri has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and the State of Missouri has adopted by reference the federal regulations cited herein at Title 10, Code of State Regulations ("C.S.R."), Chapter 25 ("10 C.S.R. 25"). Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA to enforce the provisions of the authorized state program and the regulations promulgated thereunder. When the EPA determines that any person has violated or is in violation of any RCRA requirement, EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928. In the case of a violation of any RCRA requirement, where such violation occurs in a state which is authorized to implement a hazardous waste program pursuant to Section 3006 of RCRA, EPA shall give notice to the state in which such violation has occurred or is occurring prior to issuing an order. The State of Missouri has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management).

This figure has been adjusted upward for inflation pursuant to the Civil Monetary Inflation Adjustment Rule, 40 C.F.R. Part 19, so that penalties of up to \$32,500 per day are now authorized for violations of Subchapter III of RCRA that occur after March 15, 2004. Based upon the facts alleged in this Complaint and upon those factors which Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), as discussed in the RCRA Civil Penalty Policy issued by EPA in June 2003, and attached hereto, including the seriousness of the violations, the threat of harm to public health or the environment, any good faith efforts of Respondent to comply with applicable requirements, as well as other matters as justice may require, the Complainant proposes that Respondent be assessed a civil penalty pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), for the violations of RCRA alleged in the Complaint. The proposed penalty may be adjusted if Respondent establishes bona fide issues relevant to the statutory factors for the assessment of the proposed penalty.

II. COMPLAINT

ALLEGATIONS COMMON TO ALL COUNTS

1. Respondent is an agency of the United States operating within the State of Missouri and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

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2. Respondent operates a facility located in Kansas City, Missouri. This facility is responsible for developing technologies to measure grain quality and for testing grain samples.
3. Respondent has been in operation at this location since approximately 1987, and currently employs approximately 60 employees.
4. On or about March 11, 2003, Respondent notified the Missouri Department of Natural Resources that it was a generator of more than 1000 kilograms per month of hazardous waste.
5. Respondent has been assigned the facility identification number MOD985796762.
6. On November 8-9, 2005, EPA conducted a RCRA compliance evaluation inspection at Respondent's facility. Based on a review of known hazardous waste being generated and accumulated on-site at the facility, it was determined that Respondent was operating at that time as a large quantity generator of hazardous waste.
7. Based on information obtained during the November 2005 inspection, Respondent was issued a Notice of Violation.

COUNT I

**OPERATING AS A TREATMENT, STORAGE OR DISPOSAL FACILITY
WITHOUT A RCRA PERMIT OR RCRA INTERIM STATUS**

8. Complainant hereby incorporates the allegations contained in paragraphs 1 through 7 above, as if fully set forth herein.

Generation and Accumulation of Acute Hazardous Wastes in Excess of Exclusion Limits

9. The regulations at 10 C.S.R. 25-4.261(1), which incorporate the requirements in 40 C.F.R. § 261.5(e), state that if a generator generates in excess of one kilogram of acute hazardous waste in a calendar month, all quantities of that acute hazardous waste are subject to full regulation under 40 C.F.R. Parts 262 through 266.
10. At the time of the November 2005 EPA inspection, Respondent had been generating acute hazardous wastes at its facility at an average rate of more than one kilogram per calendar month.

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11. The regulations at 10 C.S.R. 25-4.261(1), which incorporate the requirements in 40 C.F.R. § 261.5(f)(2), state that if at any time a generator accumulates more than one kilogram of acute hazardous waste on-site, all of the accumulated waste is subject to regulation under 40 C.F.R. Parts 262 through 266. Furthermore, the time period of 40 C.F.R. § 262.34(a), for accumulation of wastes on-site, begins when the accumulated wastes exceed the applicable exclusion limit.

12. At the time of the November 2005 EPA inspection, Respondent had been accumulating more than one kilogram of acute hazardous wastes in the Hazardous Waste Storage Building.

13. Respondent's generation of acute hazardous wastes in excess of one kilogram per calendar month and accumulation of acute hazardous wastes in excess of one kilogram subjects these hazardous wastes to the regulations under 40 C.F.R. Parts 262 through 266.

Illegal Storage of Hazardous Waste in Excess of 90 Days

14. The regulations at 40 C.F.R. § 262.34(b), as incorporated in 10 C.S.R. 25-5.262(1), state that a generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 40 C.F.R. Parts 264 and 265 and the permit requirements of 40 C.F.R. Part 270 unless he or she has been granted an extension to the 90 days.

15. At the time of the November 2005 EPA inspection, Respondent had accumulated acute hazardous wastes on site for more than 90 days at its facility, on several occasions, dating back to September 2001.

16. By storing hazardous waste on-site for greater than 90 days, Respondent was operating as a hazardous waste storage facility and subjected itself to the requirements of 40 C.F.R. Parts 264, 265 and 270.

17. Pursuant to Section 3005 of RCRA, 42 U.S.C. § 6925, it is a violation of RCRA to operate a hazardous waste treatment, storage or disposal facility without a permit.

18. Respondent does not have a RCRA Permit to operate as a storage facility and is therefore in violation of Section 3005 of RCRA, 42 U.S.C. § 6925.

Generator Requirements

19. The regulations at 40 C.F.R. § 262.34(a) state that a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that certain conditions are met. These conditions are set forth in 40 C.F.R. § 262.34(a)(1) through (a)(4).

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Labeling and Dating

20. The regulations at 40 C.F.R. § 262.34(a)(3) require that while being accumulated on-site, each hazardous waste container is labeled or marked clearly with the words, "Hazardous Waste."
21. At the time of the November 2005 EPA inspection, Respondent had accumulated at least one container of liquid hazardous waste in the Hazardous Waste Storage Building which was not labeled with the words, "Hazardous Waste."
22. The regulations at 40 C.F.R. § 262.34(a)(2) require that while being accumulated on-site, each hazardous waste container has the date upon which each period of accumulation begins clearly marked and visible for inspection on each container.
23. At the time of the November 2005 EPA inspection, Respondent had accumulated at least six containers of hazardous wastes in the Hazardous Waste Storage Building which were not dated with the accumulation start date.

Weekly Inspections of Hazardous Waste Containers

24. The regulations at 40 C.F.R. § 262.34(a)(1)(i) require that while being accumulated on-site, hazardous waste must be placed in containers and the generator must comply with the applicable requirements of Subparts I, AA, BB, and CC of 40 C.F.R. Part 265.
25. The regulations at 40 C.F.R. § 265.174, as found in 40 C.F.R. Part 265 Subpart I, require that each owner or operator must inspect areas where containers are stored, at least weekly, looking for leaks and for deterioration caused by corrosion or other factors.
26. At the time of the November 2005 EPA inspection, Respondent had not been conducting weekly inspections of the hazardous waste containers stored in the Hazardous Waste Storage Building for at least the previous five years.

Emergency Device

27. The regulations at 40 C.F.R. § 262.34(a)(4) require, in part, that the generator complies with the requirements of Subparts C and D in 40 C.F.R. Part 265, with 40 C.F.R. § 265.16, and with 40 C.F.R. § 268.7(a)(4).
28. The regulations at 40 C.F.R. § 265.34, as found in Part 265 Subpart C, require that whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access to an internal alarm or emergency

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communication device. Furthermore, if there is ever just one employee on the premises while the facility is operating, the employee must have immediate access to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance.

29. At the time of the November 2005 EPA inspection, Respondent did not have any internal alarm or emergency communication devices in the Hazardous Waste Storage Building that were capable of summoning emergency assistance.

30. At the time of the November 2005 EPA inspection, Respondent's employees were going alone into the Hazardous Waste Storage Building without any hand-held two-way radio or other device capable of summoning external emergency assistance.

Arrangements with Local Authorities

31. The regulations at 40 C.F.R. § 262.34(a)(4) require, in part, that the generator complies with the requirements of Subparts C and D in 40 C.F.R. Part 265, with 40 C.F.R. § 265.16, and with 40 C.F.R. § 268.7(a)(4).

32. The regulations in 40 C.F.R. § 265.37, as found in Part 265 Subpart C, require that the owner or operator attempt to make arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility, places where personnel would normally be working, possible evacuation routes, and injuries likely to be encountered with the hazardous waste involved.

33. At the time of the November 2005 EPA inspection, Respondent had not made any arrangements required under 40 C.F.R. § 265.37 with the local police or hospital.

Personnel Training

34. The regulations at 40 C.F.R. § 262.34(a)(4) require, in part, that the generator complies with the requirements of Subparts C and D in 40 C.F.R. Part 265, with 40 C.F.R. § 265.16, and with 40 C.F.R. § 268.7(a)(4).

35. The regulations at 40 C.F.R. § 265.16(d) require that Respondent must maintain documents and records at the facility describing the job title of each employee engaged in hazardous waste management and the name of the employee filling each job; the specific written job description of each such employee (including the requisite skill, education, or other qualifications, and duties of facility personnel assigned to each position); a written description of the type and amount of introductory and continuing training to be given to employees engaged in

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hazardous waste management; and documented proof of completion of training or job experience by such employees.

36. At the time of the November 2005 EPA inspection, Respondent did not have documentation on-site that met the requirements of 40 C.F.R. § 265.16(d).

Contingency Plan

37. The regulations at 40 C.F.R. § 262.34(a)(4) require, in part, that the generator complies with the requirements of Subparts C and D in 40 C.F.R. Part 265, with 40 C.F.R. § 265.16, and with 40 C.F.R. § 268.7(a)(4).

38. The regulations at 40 C.F.R. § 265.51, as found in 40 C.F.R. Part 265 Subpart D, require that each owner or operator must have a contingency plan for his or her facility. The contingency plan must contain the elements described in 40 C.F.R. § 265.52.

39. At the time of the November 2005 EPA inspection, Respondent did not have a contingency plan containing all the elements required by 40 C.F.R. § 265.52. Specifically, Respondent's plan did not: a) discuss arrangements made with the local hospital, police department, or fire department to coordinate emergency services, b) list the name, work and home phone number and home address of the person(s) qualified to act as emergency coordinator(s), and c) list the location of all emergency equipment at the facility.

40. The regulations at 40 C.F.R. § 265.53, as found in 40 C.F.R. Part 265 Subpart D, require that each owner or operator submit a copy of the contingency plan to all local police departments, fire departments, hospitals, and state and local emergency response teams that may be called upon to provide emergency services.

41. At the time of the November 2005 EPA inspection, Respondent had not submitted a copy of its contingency plan to the fire department, local hospital or the police.

42. Respondent's failure to comply with the conditions set forth in 40 C.F.R. § 262.34(a), which is alleged in paragraphs 20 through 41, subjects Respondent to the requirements of having a permit or interim status, for its storage of hazardous waste.

43. Respondent does not have a RCRA Permit or RCRA Interim status to operate as a storage facility, in violation of Section 3005 of RCRA.

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Satellite Accumulation Containers

44. At the time of the November 2005 EPA inspection, Respondent had been accumulating more than 100 kilograms of non-acute hazardous waste on-site.
45. The regulations at 10 C.S.R. 25-5.262(1), which incorporate the requirements in 40 C.F.R. § 262.34(c), state that a generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with 40 C.F.R. § 262.34(a), provided that, among other things, the generator complies with 40 C.F.R. § 265.173(a) and marks the containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers and the beginning date of satellite storage.
46. The regulations at 40 C.F.R. § 265.173(a) require that a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.
47. At the time of the November 2005 EPA inspection, at least 8 satellite accumulation D001 hazardous waste containers in various labs and testing rooms (Rooms 207, 208, 209, 210 and 221) of the facility were not closed during storage.
48. At the time of the November 2005 EPA inspection, at least 18 satellite accumulation D001 hazardous waste containers in various labs and testing rooms (Rooms 207, 208, 209, 210 and 221) of the facility were not labeled with the beginning date of satellite storage.
49. By failing to comply with the required conditions of 40 C.F.R. § 262.34(c) and 10 C.S.R. 25-5.262.(2)(C)3, Respondent became subject to the requirements of having a permit or interim status for its storage of satellite accumulation hazardous waste and complying with the requirements of 40 C.F.R. § 262.34(a).
50. As discussed above in paragraphs 19 through 42, Respondent failed to comply with the requirements of 40 C.F.R. § 262.34(a) and therefore was required to have a permit or interim status, for its storage of hazardous waste.
51. Respondent does not have a RCRA Permit or RCRA Interim status to operate as a storage facility, in violation of Section 3005 of RCRA.
52. Pursuant to Section 3008(g) of RCRA, U.S.C. § 6928(g), and based upon the allegations stated above, Complainant proposes that Respondent be assessed a civil penalty of \$320,580 (which comprises a gravity-based amount of \$12,250, a multi-day amount of \$299,825 and an

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economic benefit amount of \$8,505) for operation of a RCRA storage facility without a RCRA permit or interim status.

III. COMPLIANCE ORDER

IT IS HEREBY ORDERED that within thirty (30) days of receipt of this Order, Respondent shall pay a penalty of \$320,580. Payment shall be made by certified or cashier's check payable to "Treasurer of the United States" and remitted to the Mellon Bank, United States Environmental Protection Agency, Region VII, P.O. Box 371099M, Pittsburgh, Pennsylvania 15251. A copy of said check shall be sent simultaneously by certified mail, return receipt requested, to:

Mr. Larry Mullins
ARTD/RESP
U.S. EPA Region VII
901 N. 5th Street
Kansas City, KS 66101.

The check must reference the EPA Docket Number of this Complaint and Respondent by name.

IT IS FURTHER ORDERED that Respondent take the following actions within thirty (30) days of receipt of this Order:

- (A) Respondent shall provide EPA with a copy of the procedures in place at the facility for weekly inspections of hazardous waste storage containers. Such inspections must look for leaks and for deterioration caused by corrosion or other factors, and must ensure that these containers are properly closed, labeled and dated. In addition, for a period of one year after the receipt of this Order, Respondent shall provide the completed weekly inspection logs to EPA on a semi-annual basis.
- (B) Respondent shall provide EPA with a copy of its revised contingency plan, or emergency plan, that complies with the requirements of 40 C.F.R. § 265.52. Such plan must include, at a minimum, a discussion of the arrangements made with the local hospital, police and fire department, a list of the emergency coordinators with their respective phone numbers and home addresses, and the locations of all emergency equipment at the facility.
- (C) Respondent shall provide EPA with plans, records or other documentation to show that it is in compliance with all of the training documentation requirements of 40 C.F.R. § 265.16(d).

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- (D) Respondent shall provide EPA with copies of any hazardous waste manifests generated by Respondent since November 2005, for shipments of hazardous wastes or acute hazardous wastes to any offsite hazardous waste treatment, storage or disposal facilities.
- (E) Respondent shall provide EPA with a detailed written description of how all acute hazardous wastes generated and accumulated at the facility are currently being managed and disposed.

All documents required to be submitted by this Complaint and Compliance Order shall be sent to the attention of:

Mr. Larry Mullins
ARTD/RESP
U.S. EPA Region VII
901 North 5th Street
Kansas City, Kansas 66101

IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

In accordance with Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), this Complaint shall become final unless Respondent files a written answer and requests a public hearing in writing no later than thirty (30) days after service of this Complaint.

A written answer to this Complaint must satisfy the requirements of 40 C.F.R. § 22.15 of the Consolidated Rules of Practice, a copy of which is enclosed hereto. The answer and request for hearing must be filed with the Regional Hearing Clerk, U.S. EPA Region VII, 901 N. 5th Street, Kansas City, Kansas 66101. A copy of the answer and request for hearing and copies of any subsequent documents should also be sent to Mr. Alex Chen, Office of Regional Counsel, at the same address.

Respondent's failure to file a written answer and request a hearing within thirty (30) days of service of this Complaint will constitute a binding admission of all allegations contained in the Complaint and a waiver of Respondent's right to a hearing. A Default Order may thereafter be issued by the Regional Judicial Officer, and the civil penalty proposed herein shall become due and payable without further proceedings.

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V. SETTLEMENT CONFERENCE

Whether or not Respondent requests a hearing, an informal conference may be requested in order to discuss the facts of this case in an attempt to arrive at settlement. To request a settlement conference, please contact Mr. Alex Chen, Office of Regional Counsel, U.S. EPA Region VII, 901 N. 5th Street, Kansas City, Kansas 66101, (913) 551-7962.

Please note that a request for an informal settlement conference does not extend the thirty (30) day period during which a written answer and request for a hearing must be submitted. The informal conference procedure may be pursued simultaneously with the adjudicatory hearing procedure.

EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement as a result of an informal conference. However, no penalty reduction will be made simply because such a conference is held. Any settlement which may be reached as a result of such a conference shall be embodied in a written Consent Agreement and Final Order issued by the Regional Judicial Officer, U.S. EPA Region VII.

If Respondent has neither filed an answer nor requested a hearing within thirty (30) days of service of this Complaint, Respondent may be found in default. Default by the Respondent constitutes, for the purposes of this proceeding, admission of all allegations made in the Complaint and a waiver of Respondent's right to contest such factual allegations. A Default Order may thereafter be issued by the Presiding Officer and the civil penalties proposed shall be ordered without further proceedings and Respondent will be notified that the penalties have become due and payable.

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IT IS SO ISSUED AND ORDERED:

9/29/2006
Date

Alex Chen
Alex Chen
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII

9-26-06
Date

Donald Toensing
Donald Toensing
Chief
RCRA Enforcement and State Programs Branch
Air, RCRA and Toxics Division
U.S. Environmental Protection Agency
Region VII

Attachments: Penalty Calculation Summary
Consolidated Rules of Practice Governing the Administrative Assessment of Civil
Penalties, Issuance of Compliance or Corrective Action Orders, and the
Revocation, Termination or Suspension of Permits
RCRA Civil Penalty Policy (June 2003)
Small Business Regulatory Enforcement Fairness Act (SBREFA) Fact Sheet
Notice of Securities and Exchange Commission Registrants' Duty to Disclose
Environmental Legal Proceedings
Inspection Report

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CERTIFICATE OF SERVICE

I certify that on the date noted below I hand-delivered the original and one true copy of this Complaint, Compliance Order and Notice of Opportunity for Hearing to the Regional Hearing Clerk, Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, Kansas 66101.

I further certify that on the date below I sent by certified mail, return receipt requested, a true and correct copy of the original Complaint, Compliance Order and Notice of Opportunity for Hearing; a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits (40 C.F.R. Part 22); a copy of the RCRA Civil Penalty Policy (June 2003); and a copy of the Civil Penalty Calculation Summary to the following agents of the U.S. Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, Federal Grain Inspection Service:

Steven N. Tanner
Director, Technical Center
Grain Inspection, Packers and Stockyards Administration
U.S. Department of Agriculture
10383 N. Ambassador Drive
Kansas City, Missouri 64153-1394

and

James Link
Administrator
Grain Inspection, Packers and Stockyards Administration
U.S. Department of Agriculture
Room 2055-S
1400 Independence Ave., SW
Washington, DC 20250-3601

Dated this 20th day of September 2006.

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